

# The Gazette of India

## EXTRAORDINARY PART II—Section 3 PUBLISHED BY AUTHORITY

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### ELECTION COMMISSION, INDIA NOTIFICATION

*New Delhi, the 22nd September 1956*

**S.R.O. 2217.**—Whereas the election of Shri Shukla Damubhai Chhanganlal, resident of Jawahar Nagar, Sarkhej Road, Ahmedabad as a member of the Legislative Council, Bombay, from the Ahmedabad city Graduates constituency of that Council has been called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951) by Shri Shah Sankalchand Motilal, resident of Shreeji Nivas, Sarkhej Road, Ahmedabad;

And whereas, the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of section 86 of the said Act, for the trial of the said election petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its order to the Commission;

Now, therefore, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said order of the Tribunal.

ELECTION PETITION No. 3 of 1956

EXH. No. 20

Coram:

Shri S. C. Bhat, B. A., Advocate—*Chairman.*

Shri M. D. Manek, B. A., LL. M. and Shri G. P. Murdeshwar, Advocate—  
*Members of the Election Tribunal.*

In the matter of the Representation of the People Act, 1951.

and

In the matter of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951

and

In the matter of the Election Petition presented thereunder by Shri Shah Sankalchand Motilal, residing at Shreeji Nivas, Sarkhej Road, Ahmedabad. (Shri M. C. Mehta.)

*Versus*

1. Shri Shukla Damubhai Chhanganlal, residing at Jawahar Nagar, Sarkhej Road, Ahmedabad. (Shri P. B. Patwari.)

Bye-election to the Bombay Legislative Council of the Ahmedabad City Graduates Constituency took place on 15-4-1956 at Ahmedabad. The petitioner was a candidate duly nominated at the election being himself one of the candidates, his electoral roll number being 979 at page 17 of the roll. Only the petitioner and the opponent contested the election. The counting of votes took place on 16-4-1956. The results were as under:

The petitioner got 484 votes.

The opponent got 488 votes.

15 votes were declared as invalid.

Thus, the opponent got 4 votes more than the petitioner. It is contended on behalf of the petitioner that he lost the election by a margin of four votes and the opponent was declared elected. It is contended on behalf of the petitioner that in counting the votes the Returning Officer illegally and arbitrarily rejected about 8 to 10 valid votes as invalid and accepted 10 invalid votes as valid. Votes which clearly indicated the voters' choice and preference for the petitioner by making the figure X against his name were declared invalid while votes in which the figure I and other figure X, i.e., IX, were set opposite the name of the opponent were declared valid. One vote in which the figure I was distinctly placed in the compartment opposite the petitioner's name was declared invalid, as some portion of the figure went into the opponent's compartment. If the Returning Officer had properly ruled, petitioner would have been declared elected. He should, therefore, be declared elected. The petitioner then in his petition gives certain particulars of corrupt practices with which we are not now concerned in view of his purchase Ex. 18 by which he withdraws his contentions regarding corrupt practices. In this petition, therefore, the petitioner prays for the following reliefs:

1. For scrutiny and counting of votes,
2. for a declaration that the election of the returned candidate, i.e., the opponent, is void,
3. for a declaration that the petitioner is duly elected, and
4. for costs and ancillary reliefs.

2. In his written statement Ex. 10 the opponent submits that the petition is not tenable in law, that it is vague and indefinite as it does not comply with the mandatory provisions of law, that it does not disclose or even allege grounds required in law for seeking the reliefs prayed for and is, therefore, not maintainable. Particulars of corrupt practice given are indefinite. It is also contended that the scrutiny and counting of votes are valid and not illegal or arbitrary. The allegations in paragraph 5 of the petition are vague. The petitioner was present when the votes were counted. He did not register any objection against or regarding any vote during the counting but in fact agreed with the decision of the Returning Officer. The present petition is an after-thought. The petitioner has not urged specific instances of votes accepted and rejected illegally though he was present during the counting, and was in a position to know exactly the grounds of rejection and acceptance. As the petitioner did not take this objection, he cannot be permitted to have a roving inquiry. The allegations regarding corrupt practice are also denied, but, as stated above, since those allegations have been dropped, it is not necessary to go into the particulars of these denials.

3. On these pleadings, the Tribunal raised the following issues:

1. Whether the petition is defective and not tenable in law for reasons given in the written statement and the statement of particulars filed by the opponent?
2. Whether the allegations made in paragraph 6 of the petition constitute a corrupt practice?
3. If so, does the petitioner prove the same? If proved, what is its effect on the election?
4. Is it open to the petitioner, on the allegations made in the petition, to demand computation and scrutiny of votes? If so, what is its effect?
5. If yes, whether the petitioner proves that, on the computation and scrutiny of valid votes, the petitioner has obtained a majority of valid votes?
6. If so, what is its effect on the election?
7. Is the petitioner entitled to any of the reliefs sought and if so what?

8. Does the opponent prove that the petition is false and frivolous or vexatious to the knowledge of the petitioner and is the opponent entitled to compensatory costs? If so, what compensatory costs should be awarded to him.
9. What order should be passed.

Issues 1, 2 and 4 were kept for being heard as preliminary issues, but on 1-8-1956, the petitioner gave a statement and the allegations regarding corrupt practice were withdrawn and issues 1, 2 and 3 did not survive. Issue No. 4 only, therefore, was heard as a preliminary issue.

4. It is contended on behalf of the opponent that, even assuming the allegations made in paragraph 5 of the petition to be true, the petitioner was not entitled to demand computation and scrutiny of votes. The present petition is under Chapter II of Part VI of the Representation of the People Act, 1951. The bye-election in question was with regard to a seat on the Bombay Legislative Council of the Ahmedabad City Graduates Constituency. Under Section 59:

"At every election where a poll is taken votes shall be given by ballot in such manner as may be prescribed, and no votes shall be received by proxy."

Chapter V of Part IV of the said Act deals with the counting of votes and Part VI of the Act deals with disputes regarding elections. Section 84 relates to the reliefs that could be claimed by a petitioner under this part. He can claim *inter alia* any of the following declarations:

- "(a) that the election of the returned candidate is void;
- (b) that the election of the returned candidate is void and that he himself or any other candidate has been duly elected....."

Section 100 deals with the grounds for declaring election to be void and under Section 100(2) (c).

"If the Tribunal is of opinion that the result of the election has been materially affected by the improper reception or refusal of a vote or by the reception of any vote which is void... the Tribunal shall declare the election of the returned candidate to be void."

and under Section 98 the Tribunal, at the conclusion of the trial of an election petition, shall make an order—

- "(a) dismissing the election petition; or
- (b) declaring the election of the returned candidate to be void; or
- (c) declaring the election of the returned candidate to be void and the petitioner or any other candidate to have been duly elected....."

Under Section 169 the Central Government has the power to make rules for carrying out the purposes of this Act, and in particular with regard to the duties of the presiding and polling officers, the checking of votes, the manner in which votes are to be given, the procedure to be followed in respect of the tender of votes, etc. Rules have been framed accordingly by the Central Government. Rule 47 prescribes the grounds for rejection of ballot papers. Under Rule 47 (1) (a):

"A ballot paper is to be rejected if it bears any mark or writing by which the voter can be identified....."

Chapter IV of Part II of the said rules deals with the special provisions for voting at elections in Council constituencies and Chapter VI deals with the special provisions with regard to the counting of votes at elections in Council constituencies at elections to fill seats in the Council of States and at the elections by the members of the Legislative Assemblies to fill seats in the Legislative Councils. Rule 92 runs as under:

"A ballot paper shall be invalid on which—

- (a) the figure 1 is not marked; or
- (b) the figure 1 is set opposite the name of more than one candidate; or is so placed as to render it doubtful to which candidate it is intended to apply; or
- (c) the figure 1 and some other figure is set opposite the name of the same candidate; or

- (d) any mark is made by which the elector may afterwards be identified; or
- (e) if it is postal ballot paper, the signature of the elector is not duly attested."

5. The contention of the petitioner is that some of his votes have been wrongly rejected and some of the votes for the opponent have been improperly accepted. This contention finds its place in paragraph 5 of the petition. The contention is, no doubt, a little vague but the ballot papers do not bear any serial number (it is only the counterfoil of the ballot paper that bears the serial number); so it could not be said with certainty, even though the candidate or his agent may be present at the time of the scrutiny and the counting, as to which particular ballot paper had a particular defect, or was accepted rightly or wrongly. The petitioner has, however, stated in his petition that about 8 to 10 valid votes were rejected as invalid and about 10 invalid votes were accepted as valid. He gives his objections to the decision of the Returning Officer in these terms:

- "(1) Votes which clearly showed the Voters' choice and preference for the petitioner by making the figure X against his name were declared invalid.
- (2) Votes in which the figure I and other figure X, i.e., IX were set opposite the name of the opponent were declared valid;
- (3) One vote in which the figure I was distinctly placed in the compartment opposite the petitioner's name was declared invalid as some portion of the figure went into the opponent's compartment."

6. Before we proceed to consider the sufficiency of the allegations made by the petitioner to warrant a trial of his petition, we will consider the objection raised by Shri P. B. Patwari, the learned Advocate for the opponent, that the decision and the ruling given by the Returning Officer is like a judicial order and he having exercised his discretion, the order passed by him should not be lightly interfered with. In support of his contention, he relies upon the case of *South India Bank Ltd. Vs. T. D. Pichuthayappan*, 1954 Labour Law Journal, Vol. I, page 289, and the remarks at page 294 to the effect that "The order of discharge being in accordance with a principal not extraneous to the subject matter and uniformly adopted by the management, it would be beyond the province of the Commissioner in exercise of the powers under Section 41(2) of the Act (Madras Shops and Establishments Act, 1947) to set aside those orders on the ground that the principle on which they are based did not commend itself to him or that in his opinion some other principle would be more just." The other case relied upon by Shri Patwari in support of his argument that this Tribunal should not interfere with the discretion exercised by the Returning Officer lightly is the case of *Eugene Fernandez Vs. The Labour Appellate Tribunal of India*, 1 L.L.J. (1954) 623, wherein it has been laid down that "If the discretion has been judiciously exercised it is not open to the higher Court to interfere with the exercise of the discretion on the ground that if the discretion had been conferred on the higher Court, the higher Court would have exercised it differently." The Returning Officer is not in any real sense a Judicial Officer. He is more or less an Executive Officer on whom duty is cast under the law to count and scrutinize the ballot papers. A scrutiny is a critical examination of the votes given at an election, a method of ascertaining which of the candidates has the majority or anyone capable of being lawfully returned. A re-count is not granted as a matter of right, but on evidence of good grounds for believing that there has been a mistake on the part of the Returning Officer, the Court will make an order for a re-count. It is a matter entirely in the discretion of the Court, and the petitioner has to make out and prove specific grounds which will satisfy the Court that the return was not accurate, and that a re-count and scrutiny are called for in the interests of justice. (*Vide* the Law of Elections by Khanna, page 165-166). Shri Patwari also relies upon a ruling in 2 Reports of the Indian Election Petitions (1925) by Hammond, at page 94, where also it has been stated, "It is well settled law that no candidate is, as a matter of right, entitled to such a re-count or scrutiny merely for the asking. It is a matter of discretion for the Court, and the petitioner has to make out and prove specific grounds which will satisfy the Court that the return was not accurate and that re-count and scrutiny are called for in the interest of justice." The same view has been taken in *R. Swaminatha Merchondar vs. S. Ramalingam*, 2 Election Law Reports page 51. Therefore, the Tribunal will have to see whether in the interest of justice a re-count and a fresh scrutiny are called for.

7. Now, we shall deal with the three allegations made in para 5 of the petition. The first allegation is that votes, which clearly showed the voters' choice and preference for the petitioner by making 5 the figure X against his name, were declared invalid. The learned Advocate of the petitioner submits at the bar that by the figure X is meant the Roman numerical letter "X". The second objection is that votes in which figure I and other figure X, i.e., IX, were set opposite the name of the opponent were declared valid. Under Rule 92(c), a ballot paper shall be invalid on which the figure I and some other figure are set opposite the name of the same candidate. Here it is the case of the petitioner that against the figure I, X, i.e., the figure X(10), is put down; therefore, along with the figure I, there is "some other figure" and not a mark; so the votes in favour of the opponent which are thus marked would be invalid; and it is contended in the said para 5 of the petition that about 3 to 10 votes of this type have been wrongly accepted as valid though they are under Rule 92(c) invalid and liable to be rejected. It is submitted that X in these ballot papers is not a cross but a figure. Not being a cross it is not a 'mark' but a 'figure'. It is no doubt true that, if it was merely a mark, the ballot paper would not, possibly have been invalid. As has been held in the case of *Sohanlal v. Abinath Chandar*, 4 Election Law Reports page 55. "The ballot paper was improperly rejected inasmuch as the horizontal line after the figure '1' was in no way a figure, and in any case, this was not a mark from which the voter could be identified and the chance of there being any arrangement between the voter and any candidate was excluded." Here also the learned Advocate for the petitioner has admitted that his case does not come under Rule 92(d). The third objection raised by the petitioner is that one vote in which the figure I was distinctly placed in the compartment opposite the petitioner's name was declared invalid as some portion of the figure went into the opponent's compartment. Though there is only one vote which is affected under this objection, there are about 8 to 10 votes affected under the second objection and the petitioner should be given an opportunity in the interest of justice to point out to the Tribunal that the figure X stands for X (10) and not a mere cross which may be termed a mark. These are questions which the Tribunal considers should be decided after scrutinizing the ballot papers, and under those circumstances issue No. 4 is answered in the affirmative, and it is ordered that a computation and scrutiny of the votes be held and the ballot papers be examined for a re-count. The other issues to be heard.

(Sd.) SUMANT C. BHAT, *Chairman.*

(Sd.) M. D. MANEK, *Member.*

(Sd.) G. P. MURDESHWAR, *Member.*

The 7th September 1956.

#### *Further order on the remaining issues*

#### **8. Findings:**

*Issue No. 3.*—In the negative on the first count. The second count does not arise.

*Issue No. 5.*—In the negative.

*Issue No. 6.*—Does not survive.

*Issue No. 7.*—The petitioner is not entitled to any relief.

*Issue No. 8.*—In the negative.

*Issue No. 9.*—As per order.

#### *Reasons*

9. After the finding on issue No. 4 was given by the Tribunal the ballot box was opened in the presence of the Tribunal, the parties and their learned Advocates, as per order on ex. 19. The parties were required to examine the ballot papers and they have, after due examination of the ballot papers, taken out certain ballot papers regarding which they have objections to urge or something to say. The ballot papers so taken out have been given numbers P/1 to P/14, and R.O./1 to R.O./15 (ballot papers rejected by the Returning Officer). The learned Advocates for the parties were heard as regards these ballot papers, and the objections raised and arguments urged by the learned Advocate for the petitioner may be grouped in four classes. With regard to ballot papers marked P/9 and P/11, the ground of attack is new in the sense that the objection raised is not covered by the objections taken in para 5 of the or in any other paragraph of the petition. The objection taken with regard to ballot papers marked P/2, P/3, P/6 and P/7 is covered by the ground of attack No. 2 of the petitioner as set out in para 5 of the petition. Objection regarding ballot paper marked R.O./6 is covered under ground No. 3 and regarding ballot paper marked R.O./8 to R.O./15, the objection is covered under ground No. 1.

10. Now, we shall deal with the several ballot papers referred to above. So far as the ballot paper Nos. P/9 and P/11 are concerned, they are votes appearing to have been cast in favour of the opponent and the Returning Officer has received them as valid votes in favour of the opponent. The objection of the petitioner to these votes is that the voter has not put the figure 1 against the name of the opponent in the ballot papers and the votes were invalid, and the Returning Officer has improperly received them. In the first place, this is a new ground put up before the Tribunal for the first time at this further hearing i.e., after the scrutiny. No such ground has been taken in the petition nor was it urged at the hearing of issue No. 4. It cannot, therefore, be allowed now to be urged. In the second place, no such objection was taken before the Returning Officer at the time of counting of votes. Thirdly, we have personally seen the ballot papers in question and are clearly of the opinion that the figures set by the voters against the name of the opponent are figure 1, on P/9 the figure is written in English and on P/11 in Gujarati. Thus, on merits also, there is no substance in the contention of the petitioner about these two ballot papers.

11. Before dealing with the other objections, it is necessary to observe that the Tribunal can declare the election of the returned candidate to be void, if it is of opinion that the result of the election "has been materially affected by the improper reception or refusal of a vote or....." within the meaning of Section 100(2)(c) of the Act. The Tribunal shall, therefore, have to see (1) whether there is improper reception or refusal of a vote and (2) whether, because of that, the result of the election is materially affected. It is also to be remembered that it is prescribed by section 59 that, where poll is taken, vote *shall* be given by ballot *in such manner* as may be prescribed. The form of the ballot paper in the present case as pointed out above is Form No. 17. In that form, instructions for voting are given, and Rule 92 contains grounds for declaring ballot papers invalid. This rule is, in the judgment of the Tribunal, mandatory. The material portion of the rule runs thus:

"A ballot paper *shall* be invalid on which—

- (a) the figure 1 is not marked; or
- (b) the figure 1 is set opposite the name of more than one candidate; or is so placed as to render it doubtful to which candidate it is intended to apply; or
- (c) the figure 1 and some other figure are set opposite the name of the same candidate....."

The learned Advocate for the petitioner has referred us to certain observations made at pages 61, 62, 63, 64 of the treatise by Khanna and also to other treatises on the law of election and parliamentary practice to support his contention that, though a provision similar to clause (d) of Rule 92 which lays down that a ballot paper shall be invalid on which any mark is made by which the elector may afterwards be identified, a provision similar to clause (a) of the same rule quoted above, would be directory in character as against the provision in clause (d) being mandatory. His contention was that in spite of the provision in clause (a) that there should be the figure 1 marked on a ballot paper to render it valid, any other figure or mark made by the voter so as to indicate his choice or preference for the candidate should be taken as validly casting the vote in favour of the candidate. We are unable to accept this contention. We have specific mandatory provision about the manner in which a voter can validly cast his vote, with the further specific rule that a vote cast in any other manner shall be invalid. Further, the bye-election before us was in a special constituency of the graduates. Here Rule 47 in Chapter III of Part II of the Election Rules for the counting of votes at elections in constituencies other than the Council constituency may be usefully compared with Rule 92. According to Rule 47(1)(a) "A ballot paper contained in a ballot box shall be rejected if—(a) it bears any mark or writing by which the elector can be identified....." Form No. 11 of ballot paper [Rule 38(1)] contains instructions for the voter. Instruction No. 3 is: "Votes shall be recorded by placing a mark on the ballot paper opposite the name (names) of the candidate....." Here in the case before us no mark is to be placed but as required in Form No. 17 and Rule 92 figure 1 is to be put. Under these circumstances ballot papers which do not strictly comply with the requirements of Rule 92 and the instructions on the ballot paper, or are in contravention thereof, are invalid and liable to be rejected.

12. The ballot papers marked R.O./8 to R.O./15 show that the voters have made the mark of cross against the name of the candidate, but have not put the

figure 1. The Returning Officer has rejected them as being invalid, because the figure 1 is not put. He has thus complied with the mandatory provisions of Rule 92. It cannot be said that his rejection of these votes was improper. We are unable to accept the contention of the learned Advocate of the petitioner to the contrary. We thus find that there is no substance in the contention of the petitioner that such of these ballot papers as show that a cross was put by the voter against his name should have been counted as valid votes in his favour.

13. As regards ballot papers marked P/2, P/3, P/6 and P/7, they are treated by the Returning Officer as valid votes in favour of the opponent. The objection of the petitioner is that, as, before the figure 1, the voters in these cases have also put a cross, this infringes Rule 92, clauses (a) and (c), and the votes were invalid and have been improperly received by the Returning Officer. The original contention of the learned Advocate of the petitioner was that the X in such papers represented the Roman figure X for the numerical 10, and thus the putting of X amounted to a second figure as also changed the figure 1 to make it read as Roman numerical figure XI. This contention is not pressed at this further hearing and it is not argued that X represents the Roman numerical X (10). We have personally seen these disputed ballot papers and are satisfied that what is written is X meaning cross and not the Roman letter X for the numerical 10. The contention now put forward before us is that the clause (c) of Rule 92 uses the word "figure" in two different senses, the first place where it occurs as figure "1" meaning a numerical figure, whereas in the further part of the same clause in the expression "some other figure" the word figure is used in a generic sense including numerical figure, or any other design or mark. The learned Advocate has referred us to the meanings of "figure" and "mark" from the concise Oxford dictionary. However, there is substance in the contention of the learned Advocate of the opponent that the word "figure" used in the rules before us should be taken in the same meaning in the different rules where it occurs as also in the different clauses of Rule 92, and further that it should be construed in the light of the context. We have carefully considered the rival arguments urged before us on the point of the construction of the word "figure" in the second part of clause (c) where it occurs in the expression "some other figure". We have also to take into account that Rule 92 should be so construed as not to destroy the right of the voter unless clear words expressly compel us to do so. We have also taken into account the general canon of construction that the same word occurring in the different provisions of a statute or a body of statutory rules should have the same meaning throughout. In our judgement the word "figure" used in the different clauses of Rule 92 as also in Rule 91 should be taken to mean numerical figure and not any other mark. If we were to accept the contention of the learned Advocate of the petitioner, we will have to give different meanings to the word "figure" not only in the different clauses of the same rule, but of the different parts of one and the same clause of the rule. We are not satisfied that there are any express words which compel us to give a different meaning to the word when it occurs for the second time in clause (c). Hence, we reject the contention of the learned Advocate of the petitioner that when, along with figure 1, the mark X in the sense of a cross is added, it would be a case covered by clause (c) and would render the ballot paper invalid. One of the arguments urged by the learned Advocate of the petitioner in support of his contention is that, if we take the word "figure" at the two places where it occurs in clause (c) to mean a numerical figure only, it renders clause (c) redundant, because the ground of invalidity covered by this clause would be, according to him, already provided by clause (a). In our judgment, the two clauses (a) and (c) contemplate two different sets of grounds. Clause (a) would show that for the validity of a ballot paper the figure 1 is obligatory. This means that if the voter has shown his choice by putting any other mark, like a cross or otherwise without putting the figure 1 at all, the vote would be invalid. Clause (c) contains a further provision that even if figure 1 is put and the ballot paper is not hit by the ground mentioned in clause (a), it would still be invalid if a further numerical figure is set along with figure 1. In admitting as valid the ballot papers before us which contain the figure 1 along with X written before it as valid on the ground that X was not a figure but a mark, the Returning Officer does not appear to have acted improperly and we are not satisfied that his reception of the four votes now before us was improper.

14. Voting paper marked R.O./6 has been rejected by the Returning Officer on the ground that, though figure 1 is set on the ballot paper it is set opposite the name of more than one candidate, the ballot paper being thus invalid on the ground covered by the first part of clause (c) of Rule 92. The learned Advocate

of the petitioner contends that, as the figure 1 written in Gujarati begins from the compartment against the name of his client and the portion in that compartment is the head of the figure, the extension of the figure in the compartment of the opponent should be regarded merely as a flourish of the figure and it should be treated that the figure is written solely in the compartment of his client, and that the vote is thus valid, but was improperly rejected by the Returning Officer. We have carefully examined the ballot paper in question. We find that the figure 1 is practically equally divided between the names of both the parties, and that it is clearly a case of the figure being set opposite the name of more than one candidate as contemplated by clause (c) of Rule 92. This was also the view of the Returning Officer. In our judgment, it was proper and the ballot paper has been rightly rejected.

15. Though the petitioner has taken out in all 14 ballot papers from the papers received as valid by the Returning Officer, he has pressed at the hearing before us his objections only for the ballot papers which we have dealt with above. He has not pressed any objection, with reference to the remaining ballot papers. All the 15 ballot papers which were rejected by the Returning Officer were also placed before us, but the petitioner has not pressed at the hearing any objection beyond those out of them with which we have dealt above. The result of our decision is that the petitioner does not get any additional valid vote beyond 484 votes found in his favour by the Returning Officer at the time of the counting. Similarly the petitioner has failed to show that any of the votes counted in favour of the opponent, the returned candidate, as valid was improperly received because it was invalid or void. The result is that, on our scrutiny and computation of the votes, the petitioner fails to show that he has received a majority of the valid votes. After the scrutiny, the opponent has put before us 13 votes in favour of the petitioner which have been counted as valid by the Returning Officer with a contention that they are invalid and were improperly received by the Returning Officer in favour of the petitioner at the time of the count while declaring the result of the election. The learned Advocate of the petitioner raised a preliminary contention that as the opponent had not filed a recrimination and followed the procedure prescribed by Section 97 of the special Act before us, the opponent cannot be heard in the challenge of the said 13 votes in favour of the petitioner. As during the trial of the grounds urged by the petitioner, we find that he fails to establish that he has received a majority of the valid votes, we do not think it necessary to go into the question whether it is open to the opponent to challenge the said 13 votes in favour of the petitioner as objected to by the preliminary objection mentioned above or whether on merits there is any substance in this contention of the opponent if there be any substance in the contention it would merely support the conclusion which we have reached above after dealing with all the grounds on which the petitioner has sought the reliefs before us that he has failed to establish that he has received the majority of valid votes.

16. In view of the findings mentioned above, the petitioner is not entitled to any of the reliefs sought and the petition must be dismissed under Section 98 of the Act before us. Besides the grounds of attack on the reception or rejection of certain votes in favour of one or the other party, the petitioner had originally also attacked the validity of the election of the opponent on the ground of a corrupt practice which might have fallen under category (6) of the major corrupt practices mentioned in Section 123 of the Act before us. However, shortly after the issues for decision were settled by us and before the preliminary hearing, he has filed a statement Exh. 18 withdrawing his case about the corrupt practice and his claim for relief on that basis. In spite of this, as the petitioner had alleged a corrupt practice, under Section 99(1)(a) of the Act we have to record a finding whether the corrupt practice has or has not been proved. The petitioner has not attempted to prove the corrupt practice he had originally alleged and we find that it is not proved.

17. Lastly we have to decide the question of costs. If the petition were based merely on the ground that the Returning Officer had improperly received or rejected some votes which materially affected the result of the election, we might have not saddled the petitioner with any costs or might have directed him to pay some nominal costs, as we found that there was a case for scrutiny and computation of votes by us. However, the petition was not confined merely to the ground mentioned above. The petitioner had made a further case of a corrupt practice by the opponent during the election. This in itself in an election of a graduates constituency for a seat in the Legislative Council of the State was a serious charge. It is true that the petitioner has not pressed this charge at the



hearing. He has mentioned his reasons for not doing so in the statement he has filed at Exh. 18. We have however to take into account that the said statement was filed after the opponent had vehemently disputed the truth of the allegation about the corrupt practice in his written objection as also claimed compensatory costs. Even in the statement he has filed withdrawing this part of his claim, the petitioner does not appear to have made any amends for the serious charge of corrupt practice. The normal rule that costs follow the event may well be applied to this case in view of the circumstance mentioned above. The opponent had to engage legal practitioners for his defence. The hearing before us has lasted for three days. Taking the circumstances of the case into consideration we think that an award of Rs. 180 for costs of this petition to the opponent from the petitioner would meet the ends of justice. The opponent has not pressed his claim for compensatory costs. In the result, we pass the following order:

ORDER

The petition is dismissed under Section 98(a) of the Representation of the People Act, 1951. The petitioner is directed to bear his own costs and to pay Rs. 180 to the opponent for costs.

(Sd.) SUMANT C BHAT, *Chairman.*

*The 7th September 1956.*

(Sd.) M. D. MANEK, *Member.*

(Sd.) G. P. MURDESHWAR, *Member.*

[No. 82/3/56/28056.]

A. KRISHNASWAMY AIYANGAR, *Secy.*

